

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-61670-WILLIAMS

OLIVIA MODIRA,

Plaintiff,

vs.

ChildNet, Inc.,

Defendant.

_____ /

ORDER

THIS MATTER is before the Court on *pro se* Plaintiff Olivia Modira's "Amended Petition for a Writ of Habeas Corpus and Emergency Motion for Return of Child" (DE 6). The Court reviews this amended petition under the screening provisions of 28 U.S.C. § 1915(e) based on Plaintiff's motion for leave to proceed *in forma pauperis* (DE 2), which was filed with her initial petition.

I. BACKGROUND

Plaintiff's amended petition and the supporting documents filed since the Court issued its August 18, 2016 order provide a number of additional details regarding the circumstances surrounding Plaintiff's claims. Plaintiff explains that her son was the subject of a case involving the Department of Children and Families ("DCF"), Case No. 2010-8479 CJ-SP. Following a DCF report finding that her son was subject to "imminent harm" due to medical neglect, Plaintiff's son was removed by a Child Protective Investigator ("CPI") on October 21, 2010. The amended petition also

attaches a report from the Coastal Carolina Neuropsychiatric Center that states that Plaintiff has “mild intellectual disabilities” and cognitive symptoms. (DE 6 at 8). Plaintiff similarly states that she had “complications understanding” what was happening when her child was removed due to a stroke that she suffered at the age of six. (DE 6 at 3, 7). Plaintiff denies the neglect allegations, and filed with the Court her son’s medical records and physician’s reports regarding the treatment sought for her son’s potential medical needs. (DE 8 at 9-16). Plaintiff also filed letters that she wrote providing the medical records to DCF, though some of those letters are unaddressed and undated. (DE 8 at 1-3).

Despite the additional information provided in Plaintiff’s amended petition, the Court cannot discern the disposition of the DCF case or the events that led to Plaintiff’s son being placed in the custody of ChildNet, a foster care agency utilized by DCF. The only information regarding the DCF case that was provided by Plaintiff—apart from mention of the proceedings in the narrative of her petition—was a one-page excerpt of the allegations against her and a “Termination of Supervision Report” dated December 9, 2011, which requests that permanent guardianship be awarded to the child’s maternal great aunt, Arnette Davis. (DE 8 at 8, 4-7). It is unclear to the Court whether the DCF case is ongoing or has been fully adjudicated and it is also unclear how guardianship by Ms. Davis was terminated—or whether it was ever granted—and how the child came under the care of Defendant, ChildNet.

II. LEGAL STANDARD

As the Court stated in its previous order, the screening provisions of 28 U.S.C. § 1915(e) are applicable to this matter because Plaintiff has moved to proceed *in forma*

pauperis. Though the Court applies a less stringent standard of review to Plaintiff's *pro se* petition, it must still determine whether the amended petition can sustain a cause of action. See *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998); *GJR Invs., Inc. v. Cnty. of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998), *overruled on other grounds by Ashcroft v. Iqbal*, 556 U.S. 662 (2009). The Court also must determine, as a threshold matter, whether it has jurisdiction over Plaintiff's claims.

Federal courts are courts of limited jurisdiction and are "obligated to inquire into subject-matter jurisdiction whenever it may be lacking." *Blakenship v. Gulf Power Co.*, 551 F. App'x. 468, 470 (11th Cir. 2013) (quoting *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 975 (11th Cir. 2005)). If, at any time, the Court determines that it lacks subject matter jurisdiction, the Court must dismiss the action. See Fed. R. Civ. P. 12(h)(3). Among other restrictions, federal Courts have limited authority to review decisions handed down by the state courts. For ongoing state court cases, the federal courts are limited by the *Younger* abstention doctrine, which provides that federal courts should abstain from assuming jurisdiction whenever federal claims have been or could be presented in ongoing state judicial proceedings that concern important state interests. See *31 Foster Children v. Bush*, 329 F.3d 1255 (11th Cir. 2003) (citing *Middlesex Cty. Ethics Cmm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982)). For concluded state court cases, Federal court jurisdiction is limited by the *Rooker-Feldman* doctrine, which "places limits on the subject matter jurisdiction of federal district courts and courts of appeal over certain matters related to previous state court litigation." *Goodman ex rel. Goodman v. Sipos*, 259 F.3d 1327, 1332 (11th Cir. 2001). Under the doctrine, "federal courts, other than the United States Supreme Court, have

no authority to review the final judgments of state courts.” *Siegel v. LePore*, 234 F.3d 1163, 1172 (11th Cir. 2000).

III. DISCUSSION

Plaintiff labels her case as “a petition for a writ of habeas corpus . . . and emergency motion for return of child.” Additionally, Plaintiff’s petition alleges that the removal of her child by the CPI “violates [her] rights and [her children’s rights under the American Constitution for the United States also under UCC 1-308 formerly 1-207 (reservation of rights), title 18 U.S.C. 1201 (felonious restraints), and . . . also violated [her] rights and [her] child’s rights under Title 18 U.S.C. 241 and 242 (Conspiracy against rights and deprivations of rights under the color of law), also under Title 42 U.S.C. 1983, and Title II of the ADA.” (DE 6 at 3). Despite these alleged bases for federal jurisdiction, however, Plaintiff’s request for relief is “the immediate return of [her] child,” who, as the amended petition explains, was removed pursuant to a DFS case. The evidence provided by Plaintiff (DE 6, DE 8) is similarly aimed at rebutting the allegations of medical neglect that were the subject of the DFS case. As such, the relief requested by Plaintiff is functionally equivalent to a request that the Court review decisions made in the state court proceedings in Case No. 2010-8479 CJ-SP.

The Court has no authority to review the state-court proceedings that led to the child’s removal, whether they are concluded or ongoing. Any allegations regarding the fairness of the state court proceedings that led to the removal of her son must be raised in state court; the federal courts are barred from review of the removal process in this case by *Younger* and *Rooker-Feldman*. Accordingly the Court finds that it lacks jurisdiction to adjudicate Plaintiff’s petition as it would require the Court to review or alter

the state-court proceedings that led to the removal of Plaintiff's child in 2010. With regard to any federal civil rights claims Plaintiff may be attempting to raise in her Petition, the Court finds that she has failed to state a claim on which relief can be granted, even under the relaxed pleading standards afforded to *pro se* litigants. See *Abele v. Tolbert*, 130 F. App'x 342, 343 (11th Cir. 2005). It is therefore **ORDERED AND ADJUDGED** that Plaintiff's Amended Petition (DE 6) is **DISMISSED**. All pending motions are **DENIED AS MOOT**. The Clerk of the Court is directed to **CLOSE** this case.

DONE AND ORDERED in chambers in Miami, Florida, this 16th day of September, 2016.


KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

cc: Olivia Modira
300 Village Drive, Apt. #D4
Jacksonville, NC 28546